

FIRST REGULAR SESSION

SENATE BILL NO. 303

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time February 21, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1624S.011

AN ACT

To repeal sections 324.043, 334.040, 334.070, 334.090, 334.100, 334.102, 334.103, 334.107, 334.127, 334.715, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, RSMo, and to enact in lieu thereof twenty-two new sections relating to licensure of certain professions, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 324.043, 334.040, 334.070, 334.090, 334.100, 334.102, 334.103, 334.107, 334.127, 334.715, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, RSMo, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 324.043, 324.045, 334.001, 334.040, 334.070, 334.090, 334.091, 334.092, 334.099, 334.100, 334.102, 334.103, 334.107, 334.108, 334.127, 334.715, 536.063, 536.067, 536.070, 621.045, 621.100, and 621.110, to read as follows:

324.043. 1. Except as provided in this section, no disciplinary proceeding against any person or entity licensed, registered, or certified to practice a profession within the division of professional registration shall be initiated unless such action is commenced within three years of the date upon which the licensing, registering, or certifying agency received notice of an alleged violation of an applicable statute or regulation.

2. For the purpose of this section, notice shall be limited to:

(1) A written complaint;

(2) Notice of final disposition of a malpractice claim, including exhaustion of all extraordinary remedies and appeals;

(3) Notice of exhaustion of all extraordinary remedies and appeals of a conviction based upon a criminal statute of this state, any other state, or the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 federal government;

14 (4) Notice of exhaustion of all extraordinary remedies and appeals in a
15 disciplinary action by a hospital, state licensing, registering or certifying agency,
16 or an agency of the federal government.

17 3. For the purposes of this section, an action is commenced when a
18 complaint is filed by the agency with the administrative hearing commission, any
19 other appropriate agency, or in a court; or when a complaint is filed by the
20 agency's legal counsel with the agency in respect to an automatic revocation or
21 a probation violation.

22 4. Disciplinary proceedings based upon repeated negligence shall be
23 exempt from all limitations set forth in this section.

24 5. Disciplinary proceedings based upon a complaint involving sexual
25 misconduct shall be exempt from all limitations set forth in this section.

26 6. Any time limitation provided in this section shall be tolled:

27 (1) During any time the accused licensee, registrant, or certificant is
28 practicing exclusively outside the state of Missouri or residing outside the state
29 of Missouri and not practicing in Missouri;

30 (2) As to an individual complainant, during the time when such
31 complainant is less than eighteen years of age;

32 (3) During any time the accused licensee, registrant, or certificant
33 maintains legal action against the agency; or

34 (4) When a settlement agreement is offered to the accused licensee,
35 registrant, or certificant, in an attempt to settle such disciplinary matter without
36 formal proceeding pursuant to section 621.045 until the accused licensee,
37 registrant, or certificant rejects or accepts the settlement agreement.

38 7. The licensing agency may, in its discretion, toll any time limitation
39 when the accused **applicant**, licensee, registrant, or certificant enters into and
40 participates in a treatment program for chemical dependency or mental
41 impairment.

**324.045. Notwithstanding any provision of chapter 536, in any
2 proceeding initiated by the division of professional registration or any
3 board, committee, commission, or office within the division of
4 professional registration to determine the appropriate level of
5 discipline or additional discipline, if any, against a licensee of the
6 board, committee, commission, or office within the division, if the
7 licensee against whom the proceeding has been initiated upon proper**

8 notice fails to plead or otherwise defend against the proceeding, the
9 board, commission, committee, or office within the division shall enter
10 a default decision against the licensee without further
11 proceedings. The terms of the default decision shall not exceed the
12 terms of discipline authorized by law for the division, board,
13 commission, or committee. The division, office, board, commission, or
14 committee shall provide the licensee notice of the default decision in
15 writing.

334.001. 1. Notwithstanding any other provision of law to the
2 contrary, the following information is an open record and shall be
3 released upon request of any person and may be published on the
4 board's website:

- 5 (1) The name of a licensee or applicant;
- 6 (2) The business address;
- 7 (3) Registration type;
- 8 (4) Currency of the license, certificate, or registration;
- 9 (5) Professional schools attended;
- 10 (6) Degrees and certifications, including certification by the
11 American Board of Medical Specialties, the American Osteopathic
12 Association, or other certifying agency approved by the board by rule;
- 13 (7) To the extent known to the board, discipline by another state
14 or administrative agency;
- 15 (8) Limitations on practice placed by a court of competent
16 jurisdiction;
- 17 (9) Any final discipline by the board, including the content of the
18 settlement agreement or order issued; and
- 19 (10) Whether a discipline case brought by the board is pending
20 in the administrative hearing commission or any court.

21 2. All other information pertaining to a licensee or applicant not
22 specifically denominated an open record in subsection 1 of this section
23 is a closed record and confidential.

24 3. The board shall disclose confidential information without
25 charge or fee upon written request of the licensee or applicant if the
26 information is less than five years old. If the information requested is
27 more than five years old, the board may charge a fee equivalent to the
28 fee specified in 20 CSR 2150-1.015.

29 4. At its discretion, the board may disclose confidential

30 information, without the consent of the licensee or applicant, to a
31 licensee or licensed applicant in order to further an investigation or to
32 facilitate settlement negotiations, or in the course of voluntary
33 interstate exchange of information, to other administrative or law
34 enforcement agencies acting within the scope of their statutory
35 authority.

36 5. Information obtained from a federal administrative or law
37 enforcement agency shall be disclosed only after the board has
38 obtained written consent to the disclosure from the federal
39 administrative or law enforcement agency.

40 6. The board is entitled to the attorney/client privilege and work
41 product privilege to the same extent as any other person.

334.040. 1. Except as provided in section 334.260, all persons desiring to
2 practice as physicians and surgeons in this state shall be examined as to their
3 fitness to engage in such practice by the board. All persons applying for
4 examination shall file a completed application with the board [at least eighty
5 days before the date set for examination upon blanks] **upon forms** furnished by
6 the board.

7 2. The examination shall be sufficient to test the applicant's fitness to
8 practice as a physician and surgeon. The examination shall be conducted in such
9 a manner as to conceal the identity of the applicant until all examinations have
10 been scored. In all such examinations an average score of not less than
11 seventy-five percent is required to pass; provided, however, that the board may
12 require applicants to take the Federation Licensing Examination, also known as
13 FLEX, or the United States Medical Licensing Examination (USMLE). If the
14 FLEX examination is required, a weighted average score of no less than
15 seventy-five [percent] is required to pass. **Scores from one test**
16 **administration of the FLEX shall not be combined or averaged with**
17 **scores from other test administrations to achieve a passing score.** The
18 passing score of the United States Medical Licensing Examination shall be
19 determined by the board through rule and regulation. The board shall not issue
20 a permanent license as a physician and surgeon or allow the Missouri state board
21 examination to be administered to any applicant who has failed to achieve a
22 passing score within three attempts on licensing examinations administered in
23 one or more states or territories of the United States, the District of Columbia or
24 Canada. The steps one, two and three of the United States Medical Licensing

25 Examination shall be taken within a seven-year period with no more than three
26 attempts on any step of the examination; however, the board may grant an
27 extension of the seven-year period if the applicant has obtained a MD/PhD degree
28 in a program accredited by the [liaison committee on medical education] **Liaison**
29 **Committee on Medical Education** (LCME) and a regional university
30 accrediting body. The board may waive the provisions of this section if the
31 applicant is licensed to practice as a physician and surgeon in another state of
32 the United States, the District of Columbia or Canada and the applicant has
33 achieved a passing score on a licensing examination administered in a state or
34 territory of the United States or the District of Columbia and no license issued
35 to the applicant has been disciplined in any state or territory of the United States
36 or the District of Columbia]. Prior to waiving the provisions of this section, the
37 board may require the applicant to achieve a passing score on one of the
38 following:

39 (1) The American Specialty Board's certifying examination in the
40 physician's field of specialization;

41 (2) Part II of the FLEX; or

42 (3) The Federation portion of the State Medical Board's Special Purpose
43 Examination (SPEX)] **and the applicant is certified in the applicant's area**
44 **of specialty by the American Board of Medical Specialties, the**
45 **American Osteopathic Association, or other certifying agency approved**
46 **by the board by rule.**

47 3. If the board waives the provisions of this section, then the license
48 issued to the applicant may be limited or restricted to the applicant's board
49 specialty. [Scores from one test administration shall not be combined or averaged
50 with scores from other test administrations to achieve a passing score.] The board
51 shall not be permitted to favor any particular school or system of healing.

52 4. **If an applicant has not actively engaged in the practice of**
53 **clinical medicine or held a teaching or faculty position in a medical or**
54 **osteopathic school approved by the American Medical Association, the**
55 **Liaison Committee on Medical Education, or the American Osteopathic**
56 **Association for any two years in the three year period immediately**
57 **preceding the filing of his or her application for licensure, the board**
58 **may require successful completion of another examination, continuing**
59 **medical education, or further training before issuing a permanent**
60 **license. The board shall adopt rules to prescribe the form and manner**

61 of such reexamination, continuing medical education, and training.

334.070. 1. Upon due application therefor and upon submission by such
2 person of evidence satisfactory to the board that he **or she** is licensed to practice
3 in this state, and upon the payment of fees required to be paid by this chapter,
4 the board shall issue to [him] **such person** a certificate of registration. The
5 certificate of registration shall contain the name of the person to whom it is
6 issued and his **or her** office address [and residence address], the expiration date,
7 and the date and number of the license to practice.

8 2. [Every person shall, upon receiving such certificate, cause it to be
9 conspicuously displayed at all times in every office maintained by him in the
10 state. If he maintains more than one office in this state, the board shall without
11 additional fee issue to him duplicate certificates of registration for each office so
12 maintained.] If any registrant shall change the location of his **or her** office
13 during the period for which any certificate of registration has been issued, [he]
14 **the registrant** shall, within fifteen days thereafter, notify the board of such
15 change [and it shall issue to him without additional fee a new registration
16 certificate showing the new location].

334.090. 1. Each applicant for registration under this chapter shall
2 accompany the application for registration with a registration fee to be paid to the
3 [director of revenue] **board**. If the application is filed and the fee paid after the
4 registration renewal date, a delinquent fee shall be paid; but whenever in the
5 opinion of the board the applicant's failure to register is caused by extenuating
6 circumstances including illness of the applicant, as defined by rule and
7 regulation, the delinquent fee may be waived by the board. Whenever any new
8 license is granted to any person under the provisions of this chapter, the board
9 shall, upon application therefor, issue to such licensee a certificate of registration
10 covering a period from the date of the issuance of the license to the next renewal
11 date without the payment of any registration fee.

12 2. The board shall set the amount of the fees which this chapter
13 authorizes and requires by rules and regulations promulgated pursuant to section
14 536.021. The fees shall be set at a level to produce revenue which shall not
15 substantially exceed the cost and expense of administering this chapter.

**334.091. 1. In disciplinary actions against licensed, registered,
2 or certified persons or persons holding a certificate of authority, the
3 board may issue an order imposing a civil penalty. Such penalty shall
4 not be imposed until the findings of fact and conclusions of law by the**

5 administrative hearing commission have been delivered to the board
6 in accordance with section 621.110, or in accordance with a settlement
7 agreement in compliance with section 621.045, or until the board finds
8 cause to discipline under subsection 8 of section 334.102 or section
9 334.103. In addition, no civil penalty shall commence until a formal
10 meeting and vote by the board has been taken to impose such a penalty.

11 2. A civil penalty imposed under this section shall not exceed
12 five thousand dollars for each offense. Each day of a continued
13 violation constitutes a separate offense, with a maximum penalty of
14 twenty-five thousand dollars. In determining the amount of penalty to
15 be imposed, the board may consider any of the following:

16 (1) Whether the amount imposed will be a substantial deterrent
17 to the violation;

18 (2) The circumstances leading to the violation;

19 (3) The severity of the violation and the risk of harm to the
20 public;

21 (4) The economic benefits gained by the violator as a result of
22 the violation; and

23 (5) The interest of the public.

24 3. Any final order imposing a civil penalty is subject to judicial
25 review upon the filing of a petition under section 536.100 by any person
26 subject to the penalty.

27 4. Payment of a civil penalty shall be made within sixty days of
28 entering the order, or if the order is stayed pending an appeal, within
29 ten days after the court enters a final judgment in favor of the board.
30 If the penalty is not timely paid, legal counsel may commence an action
31 to recover the amount of the penalty, including reasonable attorney's
32 fees and costs and a surcharge of fifteen percent of the penalty plus ten
33 percent per annum on any amounts owed. In such action, the validity
34 and appropriateness of the final order imposing the civil penalty shall
35 not be subject to review.

36 5. An action to enforce an order under this section may be joined
37 with an action for an injunction.

38 6. Any offer of settlement to resolve a civil penalty under this
39 section shall be in writing, state that an action for imposition of a civil
40 penalty may be initiated by legal counsel representing the board and
41 identify any dollar amount as an offer of settlement, which shall be

42 negotiated in good faith.

43 7. Failure to pay a civil penalty by any person licensed under
44 this chapter shall be grounds for refusing to issue, renew, or reinstate
45 a license, registration, permit, or certificate of authority.

46 8. Penalties collected under this section shall be handled in
47 accordance with Article IX, Section 7 of the Missouri
48 Constitution. Such penalties shall not be considered a charitable
49 contribution for tax purposes.

 334.092. 1. No person who does not hold the required license,
2 registration, permit, or certificate of authority from the board shall
3 perform any act for which a license, registration, permit, or certificate
4 of authority is required by the statutes pertaining to the appropriate
5 licensing board. The board may cause a complaint to be filed with the
6 administrative hearing commission, as provided in chapter 621, against
7 any unlicensed person who:

8 (1) Engages in or offers to perform any act for which a license,
9 registration, permit, or certificate of authority is required by the
10 statutes pertaining to the board; or

11 (2) Uses or employs titles defined and protected by the statutes
12 pertaining to the board or implies authorization to provide or offer
13 professional services, or otherwise uses or advertises any title, work,
14 figure, sign, card, advertisement, or other symbol or description
15 tending to convey the impression that the person holds any license,
16 registration, permit, or certificate of authority required by the statutes
17 pertaining to the board.

18 2. When reviewing complaints against unlicensed persons, the
19 board may initiate an investigation and take all measures necessary to
20 find the facts of any potential violation, including issuing subpoenas to
21 compel the attendance and testimony of witnesses and the disclosure
22 of evidence.

23 3. If the board files a complaint with the administrative hearing
24 commission, the proceedings shall be conducted in accordance with the
25 provisions of chapter 621. Upon a finding by the administrative
26 hearing commission that the grounds provided in subsection 1 of this
27 section for action are met, the board, commission, or office of the
28 division, or the division may either singularly or in combination with
29 other provisions of the statutes pertaining to the boards, commission,

30 committees, or offices of the division impose a civil penalty against the
31 persons named in the complaint in compliance with this section and
32 section 334.091 in an amount not to exceed the limit authorized by
33 section 334.091.

334.099. 1. Upon a showing of reasonable cause to believe that
2 a licensee or applicant is unable to practice his or her profession with
3 reasonable skill and safety to the public by reason of incompetency,
4 mental or physical incapacity, or due to being habitually intoxicated or
5 dependent on alcohol or controlled substances, the following shall
6 apply:

7 (1) The board shall require a licensee or applicant to submit to
8 an examination. The board shall maintain a list of facilities approved
9 to perform such examinations. The licensee or applicant may propose
10 a facility not previously approved to the board and the board may
11 accept such facility as an approved facility for such licensee or
12 applicant by a majority vote;

13 (2) For purposes of this subsection, every licensee or applicant
14 is deemed to have consented to an examination upon a showing of
15 reasonable cause. The applicant or licensee shall be deemed to have
16 waived all objections to the admissibility of testimony by the provider
17 of the examination and to the admissibility of examination reports on
18 the grounds that the provider of the examination's testimony or the
19 examination is confidential or privileged;

20 (3) Written notice of the order for an examination shall be sent
21 to the applicant or licensee by registered mail, addressed to the
22 licensee or applicant at the licensee's or applicant's last known address
23 on file with the board. The order shall state the cause for the
24 examination, how to obtain information about approved facilities, and
25 a time limit for obtaining the examination. The licensee or applicant
26 shall cause a report of the examination to be sent to the board;

27 (4) The licensee or applicant shall sign all necessary releases for
28 the board to obtain and use the examination during a hearing and to
29 disclose the recommendations of the examination as part of a
30 disciplinary order;

31 (5) After receiving the report of the examination ordered in
32 subdivision (2) of subsection 1 of this section, the board may hold a
33 hearing to determine if by a preponderance of the evidence the licensee

34 or applicant is unable to practice with reasonable skill or safety to the
35 public by reasons of medical or osteopathic incompetency, reason of
36 mental or physical incapacity, or due to the excessive use or abuse of
37 alcohol or controlled substances. If the board finds that the licensee or
38 applicant is unable to practice with reasonable skill or safety to the
39 public by reasons of medical or osteopathic incompetency, reason of
40 mental or physical incapacity, or substance abuse, the board shall, after
41 a hearing, enter an order imposing one or more of the disciplinary
42 measures set forth in subsection 4 of section 334.100; and

43 (6) The provisions of chapter 536 for a contested case, except
44 those provisions or amendments which are in conflict with this section,
45 shall apply to and govern the proceedings contained in this subsection
46 and the rights and duties of the parties involved. The person appealing
47 such an action shall be entitled to present evidence under chapter 536
48 relevant to the allegations.

49 2. Failure to submit to the examination when directed shall be
50 cause for the revocation of the license of the licensee or denial of the
51 application. No license may be reinstated or application granted until
52 such time as the examination is completed and delivered to the board
53 or the board withdraws its order.

54 3. In any proceeding under this section, neither the record of
55 proceedings nor the orders entered by the board shall be used against
56 a licensee or applicant in any other proceeding.

57 4. A licensee or applicant whose right to practice has been
58 affected under this section shall, at reasonable intervals not to exceed
59 twelve months, be afforded an opportunity to demonstrate that he or
60 she can resume the competent practice of his or her profession or
61 should be granted a license. The board may hear such motion more
62 often upon good cause shown.

63 5. For purposes of this section, "examination" means a skills,
64 multidisciplinary, or substance abuse evaluation.

334.100. 1. The board may refuse to issue or renew any certificate of
2 registration or authority, permit or license required pursuant to this chapter for
3 one or any combination of causes stated in subsection 2 of this section. The board
4 shall notify the applicant in writing of the reasons for the refusal and shall advise
5 the applicant of the applicant's right to file a complaint with the administrative
6 hearing commission as provided by chapter 621. As an alternative to a refusal

7 to issue or renew any certificate, registration or authority, the board may, at its
8 discretion, issue a license which is subject to probation, restriction or limitation
9 to an applicant for licensure for any one or any combination of causes stated in
10 subsection 2 of this section. The board's order of probation, limitation or
11 restriction shall contain a statement of the discipline imposed, the basis therefor,
12 the date such action shall become effective, and a statement that the applicant
13 has thirty days to request in writing a hearing before the administrative hearing
14 commission. If the board issues a probationary, limited or restricted license to
15 an applicant for licensure, either party may file a written petition with the
16 administrative hearing commission within thirty days of the effective date of the
17 probationary, limited or restricted license seeking review of the board's
18 determination. If no written request for a hearing is received by the
19 administrative hearing commission within the thirty-day period, the right to seek
20 review of the board's decision shall be considered as waived. **Notwithstanding**
21 **the provisions of section 621.120, the board shall retain discretion in**
22 **refusing a license or renewal of license and such discretion shall not**
23 **transfer to the administrative hearing commission.**

24 2. The board may cause a complaint to be filed with the administrative
25 hearing commission as provided by chapter 621 against any holder of any
26 certificate of registration or authority, permit or license required by this chapter
27 or any person who has failed to renew or has surrendered the person's certificate
28 of registration or authority, permit or license for any one or any combination of
29 the following causes:

30 (1) Use of any controlled substance, as defined in chapter 195, or alcoholic
31 beverage to an extent that such use impairs a person's ability to perform the work
32 of any profession licensed or regulated by this chapter;

33 (2) The person has been [finally adjudicated and] found guilty, or entered
34 a plea of guilty or nolo contendere, in a criminal prosecution under the laws of
35 any state or of the United States **or to any municipal violation**, for any
36 offense [reasonably related to] **involving** the qualifications, functions or duties
37 of any profession licensed or regulated pursuant to this chapter, for any offense
38 an essential element of which is fraud, dishonesty or an act of violence, or for any
39 offense involving moral turpitude, whether or not sentence is imposed;

40 (3) Use of fraud, deception, misrepresentation or bribery in securing any
41 certificate of registration or authority, permit or license issued pursuant to this
42 chapter or in obtaining permission to take any examination given or required

43 pursuant to this chapter;

44 (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct
45 or unprofessional conduct in the performance of the functions or duties of any
46 profession licensed or regulated by this chapter, including, but not limited to, the
47 following:

48 (a) Obtaining or attempting to obtain any fee, charge, tuition or other
49 compensation by fraud, deception or misrepresentation; willfully and continually
50 overcharging or overtreating patients; or charging for visits to the physician's
51 office which did not occur unless the services were contracted for in advance, or
52 for services which were not rendered or documented in the patient's records;

53 (b) Attempting, directly or indirectly, by way of intimidation, coercion or
54 deception, to obtain or retain a patient or discourage the use of a second opinion
55 or consultation;

56 (c) Willfully and continually performing inappropriate or unnecessary
57 treatment, diagnostic tests or medical or surgical services;

58 (d) Delegating professional responsibilities to a person who is not
59 qualified by training, skill, competency, age, experience or licensure to perform
60 such responsibilities;

61 (e) Misrepresenting that any disease, ailment or infirmity can be cured
62 by a method, procedure, treatment, medicine or device;

63 (f) Performing or prescribing medical services which have been declared
64 by board rule to be of no medical or osteopathic value;

65 (g) Final disciplinary action by any professional medical or osteopathic
66 association or society or licensed hospital or medical staff of such hospital in this
67 or any other state or territory, whether agreed to voluntarily or not, and
68 including, but not limited to, any removal, suspension, limitation, or restriction
69 of the person's license or staff or hospital privileges, failure to renew such
70 privileges or license for cause, or other final disciplinary action, if the action was
71 in any way related to unprofessional conduct[, professional incompetence,
72 malpractice or any other violation of any provision of this chapter];

73 (h) Signing a blank prescription form; or dispensing, prescribing,
74 administering or otherwise distributing any drug, controlled substance or other
75 treatment without sufficient examination **including failing to establish a**
76 **valid physician-patient relationship pursuant to section 334.108**, or for
77 other than medically accepted therapeutic or experimental or investigative
78 purposes duly authorized by a state or federal agency, or not in the course of

79 professional practice, or not in good faith to relieve pain and suffering, or not to
80 cure an ailment, physical infirmity or disease, except as authorized in section
81 334.104;

82 (i) Exercising influence within a physician-patient relationship for
83 purposes of engaging a patient in sexual activity **or being listed on any state**
84 **or federal sexual offender registry**;

85 (j) Terminating the medical care of a patient without adequate notice or
86 without making other arrangements for the continued care of the patient;

87 (k) Failing to furnish details of a patient's medical records to other
88 treating physicians or hospitals upon proper request; or failing to comply with
89 any other law relating to medical records;

90 (l) Failure of any applicant or licensee[, other than the licensee subject to
91 the investigation,] to cooperate with the board during any investigation;

92 (m) Failure to comply with any subpoena or subpoena duces tecum from
93 the board or an order of the board;

94 (n) Failure to timely pay license renewal fees specified in this chapter;

95 (o) Violating a probation agreement, **order, or other settlement**
96 **agreement** with this board or any other licensing agency;

97 (p) Failing to inform the board of the physician's current residence and
98 business address;

99 (q) Advertising by an applicant or licensee which is false or misleading,
100 or which violates any rule of the board, or which claims without substantiation
101 the positive cure of any disease, or professional superiority to or greater skill
102 than that possessed by any other physician. An applicant or licensee shall also
103 be in violation of this provision if the applicant or licensee has a financial interest
104 in any organization, corporation or association which issues or conducts such
105 advertising;

106 (r) **Any other conduct in the performance of the functions or**
107 **duties of this chapter that is unethical or unprofessional**;

108 (5) Any conduct or practice which is or might be harmful or dangerous to
109 the mental or physical health of a patient or the public; or incompetency[, gross
110 negligence] or [repeated] negligence in the performance of the functions or duties
111 of any profession licensed or regulated by this chapter. For the purposes of this
112 subdivision, ["repeated negligence" means] **the following terms shall mean:**

113 (a) **"Incompetency", lacking the requisite skills, abilities, and**
114 **qualities to effectively perform an aspect of professional practice that**

115 **the licensee has represented he or she can perform;**

116 (b) "Negligence", the failure[, on more than one occasion,] to use that
117 degree of skill and learning ordinarily used under the same or similar
118 circumstances by the member of the applicant's or licensee's profession, **in the**
119 **treatment of one or more patients whether or not actual injury or harm**
120 **occurs to the patient as a result of any such negligence;**

121 (6) Violation of, or attempting to violate, directly or indirectly, or assisting
122 or enabling any person to violate, any provision of this chapter **or chapter 324,**
123 **or of any lawful rule or regulation adopted pursuant to this chapter or chapter**
124 **324;**

125 (7) Impersonation of any person holding a certificate of registration or
126 authority, permit or license or allowing any person to use his or her certificate of
127 registration or authority, permit, license or diploma from any school;

128 (8) Revocation, suspension, restriction, modification, limitation,
129 reprimand, warning, censure, probation or other final disciplinary action against
130 the holder of or applicant for a license or other right to practice any profession
131 regulated by this chapter by another state, territory, federal agency or country,
132 whether or not voluntarily agreed to by the licensee or applicant, including, but
133 not limited to, the denial of licensure, surrender of the license, allowing the
134 license to expire or lapse, or discontinuing or limiting the practice of medicine
135 while subject to an investigation or while actually under investigation by any
136 licensing authority, medical facility, branch of the armed forces of the United
137 States of America, insurance company, court, agency of the state or federal
138 government, or employer;

139 (9) A person is finally adjudged incapacitated or disabled by a court of
140 competent jurisdiction;

141 (10) Assisting or enabling any person to practice or offer to practice any
142 profession licensed or regulated by this chapter who is not registered and
143 currently eligible to practice pursuant to this chapter; or knowingly performing
144 any act which in any way aids, assists, procures, advises, or encourages any
145 person to practice medicine who is not registered and currently eligible to practice
146 pursuant to this chapter. A physician who works in accordance with standing
147 orders or protocols or in accordance with the provisions of section 334.104 shall
148 not be in violation of this subdivision;

149 (11) Issuance of a certificate of registration or authority, permit or license
150 based upon a material mistake of fact;

151 (12) Failure to display a valid certificate or license if so required by this
152 chapter or any rule promulgated pursuant to this chapter;

153 (13) Violation of the drug laws or rules and regulations of this state,
154 **including but not limited to any provision of chapter 195, and 19 CSR**
155 **30-1**, any other state, or the federal government;

156 (14) Knowingly making, or causing to be made, or aiding, or abetting in
157 the making of, a false statement in any birth, death or other certificate or
158 document executed in connection with the practice of the person's profession;

159 (15) **Making a false statement, orally or in writing to the board;**

160 (16) Soliciting patronage in person or by agents or representatives, or by
161 any other means or manner, under the person's own name or under the name of
162 another person or concern, actual or pretended, in such a manner as to confuse,
163 deceive, or mislead the public as to the need or necessity for or appropriateness
164 of health care services for all patients, or the qualifications of an individual
165 person or persons to diagnose, render, or perform health care services;

166 [(16)] (17) Using, or permitting the use of, the person's name under the
167 designation of "Doctor", "Dr.", "M.D.", or "D.O.", or any similar designation with
168 reference to the commercial exploitation of any goods, wares or merchandise;

169 [(17)] (18) Knowingly making or causing to be made a false statement or
170 misrepresentation of a material fact, with intent to defraud, for payment
171 pursuant to the provisions of chapter 208 or chapter 630 or for payment from
172 Title XVIII or Title XIX of the federal Medicare program;

173 [(18)] (19) Failure or refusal to properly guard against contagious,
174 infectious or communicable diseases or the spread thereof; maintaining an
175 unsanitary office or performing professional services under unsanitary conditions;
176 or failure to report the existence of an unsanitary condition in the office of a
177 physician or in any health care facility to the board, in writing, within thirty days
178 after the discovery thereof;

179 [(19)] (20) Any candidate for licensure or person licensed to practice as
180 a physical therapist, paying or offering to pay a referral fee or, notwithstanding
181 section 334.010 to the contrary, practicing or offering to practice professional
182 physical therapy independent of the prescription and direction of a person
183 licensed and registered as a physician and surgeon pursuant to this chapter, as
184 a dentist pursuant to chapter 332, as a podiatrist pursuant to chapter 330, as an
185 advanced practice registered nurse under chapter 335, or any licensed and
186 registered physician, dentist, podiatrist, or advanced practice registered nurse

187 practicing in another jurisdiction, whose license is in good standing;

188 [(20)] **(21)** Any candidate for licensure or person licensed to practice as
189 a physical therapist, treating or attempting to treat ailments or other health
190 conditions of human beings other than by professional physical therapy and as
191 authorized by sections 334.500 to 334.620;

192 [(21)] **(22)** Any person licensed to practice as a physician or surgeon,
193 requiring, as a condition of the physician-patient relationship, that the patient
194 receive prescribed drugs, devices or other professional services directly from
195 facilities of that physician's office or other entities under that physician's
196 ownership or control. A physician shall provide the patient with a prescription
197 which may be taken to the facility selected by the patient and a physician
198 knowingly failing to disclose to a patient on a form approved by the advisory
199 commission for professional physical therapists as established by section 334.625
200 which is dated and signed by a patient or guardian acknowledging that the
201 patient or guardian has read and understands that the physician has a pecuniary
202 interest in a physical therapy or rehabilitation service providing prescribed
203 treatment and that the prescribed treatment is available on a competitive
204 basis. This subdivision shall not apply to a referral by one physician to another
205 physician within a group of physicians practicing together;

206 [(22)] **(23)** A pattern of personal use or consumption of any controlled
207 substance unless it is prescribed, dispensed or administered by another physician
208 who is authorized by law to do so;

209 [(23)] **(24) Habitual intoxication or dependence on alcohol;**

210 **(25) Failure to comply with a treatment program or an aftercare**
211 **program entered into as part of a board order, settlement agreement or**
212 **under subsection 7 of section 324.043 or section 334.101;**

213 **(26) Participating in a drug court, as defined in section 478.001;**

214 **(27)** Revocation, suspension, limitation, **probation**, or restriction of any
215 kind whatsoever of any controlled substance authority, whether agreed to
216 voluntarily or not, **or voluntary termination of a controlled substance**
217 **authority while under investigation;**

218 [(24)] **(28)** For a physician to operate, conduct, manage, or establish an
219 abortion facility, or for a physician to perform an abortion in an abortion facility,
220 if such facility comes under the definition of an ambulatory surgical center
221 pursuant to sections 197.200 to 197.240, and such facility has failed to obtain or
222 renew a license as an ambulatory surgical center;

223 **(29) Violating any professional trust or confidence;**

224 [(25)] **(30)** Being unable to practice as a physician and surgeon or with
225 a specialty with reasonable skill and safety to patients by reasons of [medical or
226 osteopathic incompetency, or because of illness, drunkenness, excessive use of
227 drugs, narcotics, chemicals, or as a result of any mental or physical
228 condition. The following shall apply to this subdivision:

229 (a) In enforcing this subdivision the board shall, after a hearing by the
230 board, upon a finding of probable cause, require a physician to submit to a
231 reexamination for the purpose of establishing his or her competency to practice
232 as a physician or surgeon or with a specialty conducted in accordance with rules
233 adopted for this purpose by the board, including rules to allow the examination
234 of the pattern and practice of such physician's or surgeon's professional conduct,
235 or to submit to a mental or physical examination or combination thereof by at
236 least three physicians, one selected by the physician compelled to take the
237 examination, one selected by the board, and one selected by the two physicians
238 so selected who are graduates of a professional school approved and accredited
239 as reputable by the association which has approved and accredited as reputable
240 the professional school from which the licentiate graduated. However, if the
241 physician is a graduate of a medical school not accredited by the American
242 Medical Association or American Osteopathic Association, then each party shall
243 choose any physician who is a graduate of a medical school accredited by the
244 American Medical Association or the American Osteopathic Association;

245 (b) For the purpose of this subdivision, every physician licensed pursuant
246 to this chapter is deemed to have consented to submit to a mental or physical
247 examination when directed in writing by the board and further to have waived
248 all objections to the admissibility of the examining physician's testimony or
249 examination reports on the ground that the examining physician's testimony or
250 examination is privileged;

251 (c) In addition to ordering a physical or mental examination to determine
252 competency, the board may, notwithstanding any other law limiting access to
253 medical or other health data, obtain medical data and health records relating to
254 a physician or applicant without the physician's or applicant's consent;

255 (d) Written notice of the reexamination or the physical or mental
256 examination shall be sent to the physician, by registered mail, addressed to the
257 physician at the physician's last known address. Failure of a physician to
258 designate an examining physician to the board or failure to submit to the

259 examination when directed shall constitute an admission of the allegations
260 against the physician, in which case the board may enter a final order without
261 the presentation of evidence, unless the failure was due to circumstances beyond
262 the physician's control. A physician whose right to practice has been affected
263 under this subdivision shall, at reasonable intervals, be afforded an opportunity
264 to demonstrate that the physician can resume the competent practice as a
265 physician and surgeon with reasonable skill and safety to patients;

266 (e) In any proceeding pursuant to this subdivision neither the record of
267 proceedings nor the orders entered by the board shall be used against a physician
268 in any other proceeding. Proceedings under this subdivision shall be conducted
269 by the board without the filing of a complaint with the administrative hearing
270 commission;

271 (f) When the board finds any person unqualified because of any of the
272 grounds set forth in this subdivision, it may enter an order imposing one or more
273 of the disciplinary measures set forth in subsection 4 of this section] **use of**
274 **alcohol, drugs, or narcotics.**

275 3. Collaborative practice arrangements, protocols and standing orders
276 shall be in writing and signed and dated by a physician prior to their
277 implementation.

278 4. After the filing of such complaint before the administrative hearing
279 commission, the proceedings shall be conducted in accordance with the provisions
280 of chapter 621. Upon a finding by the administrative hearing commission that
281 the grounds, provided in subsection 2 of this section, for disciplinary action are
282 met, the board may, singly or in combination, warn, censure or place the person
283 named in the complaint on probation on such terms and conditions as the board
284 deems appropriate for a period not to exceed ten years, or may suspend the
285 person's license, certificate or permit for a period not to exceed three years, or
286 restrict or limit the person's license, certificate or permit for an indefinite period
287 of time, or revoke the person's license, certificate, or permit, or administer a
288 public or private reprimand, or deny the person's application for a license, or
289 permanently withhold issuance of a license or require the person to submit to the
290 care, counseling or treatment of physicians designated by the board at the
291 expense of the individual to be examined, or require the person to attend such
292 continuing educational courses and pass such examinations as the board may
293 direct.

294 5. In any order of revocation, the board may provide that the person may

295 not apply for reinstatement of the person's license for a period of time ranging
296 from two to seven years following the date of the order of revocation. All stay
297 orders shall toll this time period.

298 6. Before restoring to good standing a license, certificate or permit issued
299 pursuant to this chapter which has been in a revoked, suspended or inactive state
300 for any cause for more than two years, the board may require the applicant to
301 attend such continuing medical education courses and pass such examinations as
302 the board may direct.

303 7. In any investigation, hearing or other proceeding to determine a
304 licensee's or applicant's fitness to practice, any record relating to any patient of
305 the licensee or applicant shall be discoverable by the board and admissible into
306 evidence, regardless of any statutory or common law privilege which such
307 licensee, applicant, record custodian or patient might otherwise invoke. In
308 addition, no such licensee, applicant, or record custodian may withhold records
309 or testimony bearing upon a licensee's or applicant's fitness to practice on the
310 ground of privilege between such licensee, applicant or record custodian and a
311 patient.

334.102. 1. [Upon receipt of information that the holder of any certificate
2 of registration or authority, permit or license issued pursuant to this chapter may
3 present a clear and present danger to the public health and safety, the executive
4 secretary or director shall direct that the information be brought to the board in
5 the form of sworn testimony or affidavits during a meeting of the board.

6 2. The board may issue an order suspending and/or restricting the holder
7 of a certificate of registration or authority, permit or license if it believes:

8 (1) The licensee's acts, conduct or condition may have violated subsection
9 2 of section 334.100; and

10 (2) A licensee is practicing, attempting or intending to practice in
11 Missouri; and

12 (3) Either a licensee is unable by reason of any physical or mental
13 condition to receive and evaluate information or to communicate decisions to the
14 extent that the licensee's condition or actions significantly affect the licensee's
15 ability to practice, or another state, territory, federal agency or country has
16 issued an order suspending or restricting the holder of a license or other right to
17 practice a profession regulated by this chapter, or the licensee has engaged in
18 repeated acts of life-threatening negligence as defined in subsection 2 of section
19 334.100; and

20 (4) The acts, conduct or condition of the licensee constitute a clear and
21 present danger to the public health and safety.

22 3. (1) The order of suspension or restriction:

23 (a) Shall be based on the sworn testimony or affidavits presented to the
24 board;

25 (b) May be issued without notice and hearing to the licensee;

26 (c) Shall include the facts which lead the board to conclude that the acts,
27 conduct or condition of the licensee constitute a clear and present danger to the
28 public health and safety; and

29 (2) The board or the administrative hearing commission shall serve the
30 licensee, in person or by certified mail, with a copy of the order of suspension or
31 restriction and all sworn testimony or affidavits presented to the board, a copy
32 of the complaint and the request for expedited hearing, and a notice of the place
33 of and the date upon which the preliminary hearing will be held.

34 (3) The order of restriction shall be effective upon service of the
35 documents required in subdivision (2) of this subsection.

36 (4) The order of suspension shall become effective upon the entry of the
37 preliminary order of the administrative hearing commission.

38 (5) The licensee may seek a stay order from the circuit court of Cole
39 County from the preliminary order of suspension, pending the issuance of a final
40 order by the administrative hearing commission.

41 4. The board shall file a complaint in the administrative hearing
42 commission with a request for expedited preliminary hearing and shall certify the
43 order of suspension or restriction and all sworn testimony or affidavits presented
44 to the board. Immediately upon receipt of a complaint filed pursuant to this
45 section, the administrative hearing commission shall set the place and date of the
46 expedited preliminary hearing which shall be conducted as soon as possible, but
47 not later than five days after the date of service upon the licensee. The
48 administrative hearing commission shall grant a licensee's request for a
49 continuance of the preliminary hearing; however, the board's order shall remain
50 in full force and effect until the preliminary hearing, which shall be held not later
51 than forty-five days after service of the documents required in subdivision (2) of
52 subsection 3.

53 5. At the preliminary hearing, the administrative hearing commission
54 shall receive into evidence all information certified by the board and shall only
55 hear evidence on the issue of whether the board's order of suspension or

56 restriction should be terminated or modified. Within one hour after the
57 preliminary hearing, the administrative hearing commission shall issue its oral
58 or written preliminary order, with or without findings of fact and conclusions of
59 law, that either adopts, terminates or modifies the board's order. The
60 administrative hearing commission shall reduce to writing any oral preliminary
61 order within five business days, but the effective date of the order shall be the
62 date orally issued.

63 6. The preliminary order of the administrative hearing commission shall
64 become a final order and shall remain in effect for three years unless either party
65 files a request for a full hearing on the merits of the complaint filed by the board
66 within thirty days from the date of the issuance of the preliminary order of the
67 administrative hearing commission.

68 7. Upon receipt of a request for full hearing, the administrative hearing
69 commission shall set a date for hearing and notify the parties in writing of the
70 time and place of the hearing. If a request for full hearing is timely filed, the
71 preliminary order of the administrative hearing commission shall remain in effect
72 until the administrative hearing commission enters an order terminating,
73 modifying, or dismissing its preliminary order or until the board issues an order
74 of discipline following its consideration of the decision of the administrative
75 hearing commission pursuant to section 621.110 and subsection 3 of section
76 334.100.

77 8. In cases where the board initiates summary suspension or restriction
78 proceedings against a physician licensed pursuant to this chapter, and said
79 petition is subsequently denied by the administrative hearing commission, in
80 addition to any award made pursuant to sections 536.085 and 536.087, the board,
81 but not individual members of the board, shall pay actual damages incurred
82 during any period of suspension or restriction.

83 9. Notwithstanding the provisions of this chapter or chapter 610 or
84 chapter 621 to the contrary, the proceedings under this section shall be closed
85 and no order shall be made public until it is final, for purposes of appeal.

86 10. The burden of proving the elements listed in subsection 2 of this
87 section shall be upon the state board of registration for the healing arts.] **The**
88 **board may, upon a showing of probable cause, issue an emergency**
89 **suspension or restriction to a licensee for the following causes:**

90 **(1) Engaging in sexual conduct, as defined in section 566.010,**
91 **with a patient who is not the licensee's spouse, regardless of whether**

92 the patient consented to the contact;

93 (2) Engaging in sexual misconduct with a minor or a person the
94 licensee believes to be a minor. "Sexual misconduct" means any conduct
95 which would be illegal under state law;

96 (3) Possession or use of a controlled substance without a valid
97 prescription;

98 (4) The licensee is finally adjudicated incapacitated or disabled
99 by court of competent jurisdiction;

100 (5) Habitual intoxication or dependence on alcohol or controlled
101 substances or failure to comply with a treatment program or an
102 aftercare program entered into as part of a board order, settlement
103 agreement, or a licensee's professional health program; or

104 (6) Any other conduct for which the board may otherwise impose
105 discipline if such conduct is a serious danger to the health, safety, or
106 welfare of a patient or the public.

107 2. The board shall determine if probable cause exists on the basis
108 of sworn affidavits or certified court records without notice to the
109 licensee.

110 3. The emergency suspension or restriction shall be effective
111 upon service to the licensee of:

112 (1) The order of emergency suspension or restriction under
113 section 536.067;

114 (2) A statement of the basis of the emergency suspension or
115 restriction;

116 (3) Copies of any affidavits or certified records the board
117 considered in making its decision; and

118 (4) Notice of the hearing date.

119 4. (1) The suspension or restriction may be appealed to the
120 circuit court of the county of residence of the licensee or if the licensee
121 is not a resident of Missouri, to the circuit court of Cole County.

122 (2) Such appeal shall be filed within thirty days of the effective
123 date of the suspension or restriction.

124 (3) The circuit court may modify or stay the emergency
125 suspension or restriction upon a finding that the board's action was:

126 (a) Unsupported by competent and substantial evidence upon the
127 whole record;

128 (b) Is arbitrary or capricious; or

129 (c) Involves an abuse of discretion.

130 (4) If the circuit court determines to vacate or modify the
131 emergency suspension or restriction pursuant to this section, the court
132 shall issue its decision vacating or modifying the suspension or
133 restriction no later than five days after the appeal is filed.

134 5. (1) Unless the circuit court vacates the order, the board shall
135 hold a hearing on the causes pled for discipline within ninety days.

136 (2) The board shall grant a continuance on request of the
137 petitioner; except that, the emergency suspension or restriction shall
138 remain in effect unless otherwise ordered by a court under subsection
139 4 of this section.

140 (3) The board shall determine whether cause for discipline exists
141 and, if so, may impose any discipline otherwise authorized by state law.

142 (4) The board shall issue a final order within thirty days of
143 hearing the case.

144 (5) The emergency suspension or restriction shall be terminated
145 as of the date of the final order of the board.

146 6. Any action under subsections 1 to 7 of this section shall be in
147 addition to and not in lieu of any penalty otherwise in the board's
148 power to impose and may be brought concurrently with other actions.

149 7. Unless it conflicts with provisions of subsections 1 to 7 of this
150 section, chapter 536 shall govern the hearings held under subsections
151 1 to 7 of this section.

152 8. (1) The board may initiate a hearing before the board for
153 discipline of any licensee's license or certificate upon receipt of:

154 (a) Certified court records of a finding of guilt or plea of guilty
155 or nolo contendere in a criminal prosecution under the laws of any
156 state or the United States or any municipal ordinance violation for any
157 offense involving the qualifications, functions, or duties of any
158 profession licensed or regulated under this chapter; for any offense an
159 essential element of which is fraud, dishonesty, or an act of violence;
160 or for any offense involving moral turpitude, whether or not sentence
161 is imposed;

162 (b) Evidence of final discipline by any medical service provider,
163 hospital, clinic, or agency against the licensee's license, certification,
164 or privileges to practice;

165 (c) Evidence of failure to pay fees as required by rule or provide

166 a current address to the board;

167 (d) Evidence of final discipline against the licensee's license,
168 certification, or registration to practice issued by any other state, the
169 United States and its territories, or any other country;

170 (e) Evidence of certified court records finding the licensee has
171 been judged incapacitated or disabled under Missouri law or the laws
172 of any other state or the United States and its territories;

173 (f) Evidence of final discipline against a licensee by any other
174 agency or entity of this state or any other state or the United States
175 and its territories.

176 (2) The board shall provide the licensee not less than ten days
177 notice of any hearing held under chapter 536.

178 (3) Upon a finding that cause exists to discipline a licensee's
179 license, the board may impose any discipline otherwise available when
180 disciplining licensees of that same profession.

181 (4) The board's decision regarding discipline of a license shall be
182 subject to judicial review under chapter 536.

334.103. 1. A license issued under this chapter by the Missouri State
2 Board of Registration for the Healing Arts shall be automatically revoked at such
3 time as the final trial proceedings are concluded whereby a licensee has been
4 adjudicated and found guilty, or has entered a plea of guilty or nolo contendere,
5 in a felony criminal prosecution under the laws of the state of Missouri, the laws
6 of any other state, or the laws of the United States of America for any offense
7 reasonably related to the qualifications, functions or duties of their profession, or
8 for any felony offense[, an essential element of which is] **involving** fraud,
9 dishonesty or an act of violence, or for any felony offense involving moral
10 turpitude, whether or not sentence is imposed, or, upon the final and
11 unconditional revocation of the license to practice their profession in another
12 state or territory upon grounds for which revocation is authorized in this state
13 following a review of the record of the proceedings and upon a formal motion of
14 the state board of registration for the healing arts. The license of any such
15 licensee shall be automatically reinstated if the conviction or the revocation is
16 ultimately set aside upon final appeal in any court of competent jurisdiction.

17 2. Anyone who has been denied a license, permit or certificate to practice
18 in another state shall automatically be denied a license to practice in this
19 state. However, the board of healing arts may set up other qualifications by

20 which such person may ultimately be qualified and licensed to practice in
21 Missouri.

334.107. [Nothing in section 334.106 and this section shall deny the right
2 of the board to deny, revoke or suspend the license of any physician or otherwise
3 discipline any physician who] 1. **For purposes of this section, the following**
4 **terms shall mean:**

5 (1) **"Controlled substance", a substance classified as a controlled**
6 **substance under section 195.017;**

7 (2) **"Medically sufficient examination", an examination conducted**
8 **in person which includes a history and physical examination with**
9 **sufficient detail to support the diagnosis made or treatment plan**
10 **created;**

11 (3) **"Medication agreement", a written document signed by the**
12 **prescriber and patient which includes at least the following statements:**

13 (a) **Patients are expected to comply with the medication**
14 **agreement. Failure to abide by the terms of the agreement may result**
15 **in the physician terminating care of the patient;**

16 (b) **The risks, benefits, and side effects of the prescribed**
17 **medication have been discussed with the patient and such discussion**
18 **will be documented in the patient's medical chart;**

19 (c) **The patient shall notify the prescriber of all controlled**
20 **substances, psychotropic medications, and noncontrolled pain**
21 **medications prescribed, dispensed, or administered, or otherwise**
22 **authorized by other practitioners to the patient within twenty-four**
23 **hours of the patient having received a controlled substance from**
24 **another practitioner;**

25 (d) **Multiple losses, thefts, or accidents causing the prescriber to**
26 **issue the patient a new prescription are grounds for the prescriber to**
27 **dismiss the patient;**

28 (e) **False statements, misrepresentations, lies, forgery, and the**
29 **failure to disclose material information relating to controlled**
30 **substances treatment is a class D felony under section 195.204;**

31 (f) **All prescriptions are issued for the patient only. It is against**
32 **the law for a patient to transfer, sell, or give his or her medications to**
33 **another person;**

34 (g) **Under subsection 5 of section 195.375, controlled substance**
35 **records are open for inspection and copying by the Bureau of Narcotics**

36 and Dangerous Drugs and law enforcement of this state;

37 (h) The prescriber may randomly perform a drug test to ensure
38 the medications that are administered, dispensed, or prescribed are in
39 the patient's body and also to determine if unauthorized controlled
40 substances are present in the patient's body. Refusal to submit to a
41 drug test or failing a drug test constitutes grounds for the licensee to
42 dismiss the patient;

43 (4) "Noncontrolled pain medication", a medication which is not
44 a controlled substance and which is prescribed in a specific case for the
45 purpose of treating pain.

46 2. Prior to prescribing a controlled substance for any purpose or
47 a noncontrolled pain medication, a prescriber shall document in the
48 patient's medical record the following:

49 (1) A medically sufficient examination conducted by the
50 prescriber issuing the prescription, a physician working in
51 collaboration with the prescriber, a licensed physician assistant, or a
52 licensed nurse practitioner working within the scope of his or her
53 practice; and

54 (2) The diagnosis supporting use of the controlled substance or
55 noncontrolled pain medication; and

56 (3) Any tests or ancillary studies supporting the diagnosis; and

57 (4) Documentation that the directions for use and side effects of
58 the medication as discussed with the patient.

59 3. If a prescriber prescribes a patient a controlled substance for
60 any purpose or noncontrolled pain medication for a single condition for
61 more than ninety days out of a period of three hundred sixty-five days,
62 the following shall apply;

63 (1) If the patient is mentally or physically able, the physician
64 shall require the patient to sign and abide by a medication agreement.
65 A copy of such agreement shall be in the patient's medical chart;

66 (2) If the patient is not mentally or physically able to sign a
67 medication agreement, documentation of that fact shall be in the
68 patient's medical chart;

69 (3) The physician may conduct random drug screening tests to
70 document compliance with the prescribed medication.

71 4. In addition to any other documentation required by federal or
72 state law, a physician shall include in the patient's medical record a

73 **copy of the prescription issued to the patient. If not noted on the**
74 **prescription, the record shall also include the name of the medication,**
75 **the date of the prescription, the quantity prescribed, the dosage**
76 **prescribed, and instructions for taking the medication.**

77 **5. The physician shall be responsible for ensuring that any**
78 **collaborating nurse practitioners or physician assistants comply with**
79 **this section.**

80 **6. A licensee shall be subject to discipline under subdivision (6)**
81 **of subsection 2 of section 334.100 if the licensee:**

82 (1) Prescribes, administers or dispenses a controlled substance that is
83 nontherapeutic in nature or nontherapeutic in the manner in which it is
84 prescribed, administered or dispensed, or fails to keep complete and accurate
85 ongoing records of the diagnosis and treatment plan; **or**

86 (2) Fails to keep complete and accurate records of controlled substances
87 received, prescribed, dispensed and administered, and disposal of drugs listed in
88 the Missouri comprehensive drug control act contained in chapter 195 or of
89 controlled substances scheduled in the Federal Comprehensive Drug Abuse
90 Prevention and Control Act of 1970, 21 U.S.C. 801, et seq. A physician shall keep
91 records of controlled substances received, prescribed, dispensed and administered,
92 and disposal of these drugs shall include the date of receipt of the drugs, the sale
93 or disposal of the drugs by the physician, the name and address of the person
94 receiving the drugs, and the reason for the disposal or the dispensing of the drugs
95 to the person; **or**

96 (3) Writes false or fictitious prescriptions for controlled substances as
97 defined in the Missouri comprehensive drug control act, chapter 195, or for
98 controlled substances scheduled in the Federal Comprehensive Drug Abuse
99 Prevention and Control Act of 1970, 21 U.S.C. 801, et seq.; **or**

100 (4) Prescribes or administers, or dispenses in a manner which is
101 inconsistent with provisions of the Missouri drug control act contained in chapter
102 195 or the Federal Comprehensive Drug Abuse Prevention and Control Act of
103 1970, 21 U.S.C. 801, et seq; **or**

104 **(5) Fails to comply with the requirements of this section.**

334.108. 1. Prior to prescribing any drug, controlled substance,
2 **or other treatment through the internet, a physician shall establish a**
3 **valid physician-patient relationship. This relationship shall include:**

4 **(1) Obtaining a reliable medical history and performing a**

5 **physical examination of the patient, adequate to establish the diagnosis**
6 **for which the drug is being prescribed and to identify underlying**
7 **conditions or contraindications to the treatment recommended or**
8 **provided;**

9 **(2) Having sufficient dialogue with the patient regarding**
10 **treatment options and the risks and benefits of treatment or**
11 **treatments;**

12 **(3) As appropriate, following up with the patient to assess the**
13 **therapeutic outcome;**

14 **(4) Maintaining a contemporaneous medical record that is**
15 **readily available to the patient and, subject to the patient's consent, to**
16 **the patient's other health care professionals; and**

17 **(5) Including the electronic prescription information as part of**
18 **the patient's medical record.**

19 **2. The requirements of subsection 1 of this section shall not**
20 **apply to treatment provided in consultation with another physician**
21 **who has an ongoing professional relationship with the patient, and who**
22 **has agreed to supervise the patient's treatment, including use of any**
23 **prescribed medications, and on-call or cross-coverage situations.**

334.127. 1. The president or secretary of the board may administer oaths,
2 subpoena witnesses, issue subpoenas duces tecum and require production of
3 documents and records. Subpoenas, including subpoenas duces tecum, shall be
4 served by a person authorized to serve subpoenas of courts of record. In lieu of
5 requiring attendance of a person to produce original documents in response to a
6 subpoena duces tecum, the board may require sworn copies of such documents to
7 be filed with it or delivered to its designated representative.

8 **2. Notwithstanding any other provision of law to the contrary,**
9 **subpoena duces tecum may be issued for documents and records of a**
10 **peer review committee, medical executive committee, hospital,**
11 **pharmacy, or to any other person or entity the board has reason to**
12 **believe is in possession of information relevant to an investigation of**
13 **a licensee.**

14 **3. The board may enforce its subpoenas, including subpoena duces tecum,**
15 **by applying to a circuit court of Cole County, the county of the investigation,**
16 **hearing or proceeding, or any county where the person resides or may be found,**
17 **for an order upon any person who shall fail to obey a subpoena to show cause why**
18 **such subpoena should not be enforced, which such order and a copy of the**

19 application therefore shall be served upon the person in the same manner as a
20 summons in a civil action, and if the circuit court shall, after a hearing,
21 determine that the subpoena should be sustained and enforced, such court shall
22 proceed to enforce the subpoena in the same manner as though the subpoena had
23 been issued in a civil case in the circuit court.

334.715. 1. The board may refuse to **issue or renew any** license [any
2 applicant or may suspend, revoke, or refuse to renew the license of any licensee
3 for any one or any combination of the causes provided in section 334.100, or if the
4 applicant or licensee] **required under sections 334.700 to 334.725 for one**
5 **or any combination of causes listed in subsection 2 of this section or**
6 **any cause listed in section 334.100. The board shall notify the applicant**
7 **in writing of the reasons for the refusal and shall advise the applicant**
8 **of the applicant's right to file a complaint with the administrative**
9 **hearing commission as provided in chapter 621. As an alternative to a**
10 **refusal to issue or renew any certificate, registration, or authority, the**
11 **board may, in its discretion, issue a license which is subject to**
12 **reprimand, probation, restriction, or limitation to an applicant for**
13 **licensure for any one or any combination of causes listed in subsection**
14 **2 of this section or section 334.100. The board's order of reprimand,**
15 **probation, limitation, or restriction shall contain a statement of the**
16 **discipline imposed, the basis therefor, the date such action shall**
17 **become effective, and a statement that the applicant has thirty days to**
18 **request in writing a hearing before the administrative hearing**
19 **commission. If the board issues a probationary, limited, or restricted**
20 **license to an applicant for licensure, either party may file a written**
21 **petition with the administrative hearing commission within thirty days**
22 **of the effective date of the probationary, limited, or restricted license**
23 **seeking review of the board's determination. If no written request for**
24 **a hearing is received by the administrative hearing commission within**
25 **the thirty-day period, the right to seek review of the board's decision**
26 **shall be considered waived.**

27 2. The board may cause a complaint to be filed with the
28 administrative hearing commission as provided in chapter 621 against
29 any holder of a certificate of registration or authority, permit, or
30 license required by sections 334.700 to 334.725 or any person who has
31 failed to renew or has surrendered the person's certification of
32 registration or license for any one or any combination of the following

33 causes:

34 (1) Violated or conspired to violate any provision of sections 334.700 to
35 334.725 or any provision of any rule promulgated pursuant to sections 334.700
36 to 334.725; or

37 (2) Has been found guilty of unethical conduct as defined in the ethical
38 standards of the National Athletic Trainers Association or the National Athletic
39 Trainers Association Board of Certification, or its successor agency, as adopted
40 and published by the committee and the board and filed with the secretary of
41 state; or

42 **(3) Any cause listed in section 334.100.**

43 [2. Upon receipt of a written application made in the form and manner
44 prescribed by the board, the board may reinstate any license which has expired,
45 been suspended or been revoked or may issue any license which has been denied;
46 provided, that no application for reinstatement or issuance of license or licensure
47 shall be considered until at least six months have elapsed from the date of denial,
48 expiration, suspension, or revocation when the license to be reinstated or issued
49 was denied issuance or renewal or was suspended or revoked for one of the causes
50 listed in subsection 1 of this section.]

51 **3. After the filing of such complaint before the administrative**
52 **hearing commission, the proceedings shall be conducted in accordance**
53 **with the provisions of chapter 621. Upon a finding by the**
54 **administrative hearing commission that the grounds provided in**
55 **subsection 2 of this section for disciplinary action are met, the board**
56 **may, singly or in combination:**

57 (1) Warn, censure, or place the person named in the complaint
58 on probation on such terms and conditions as the board deems
59 appropriate for a period not to exceed ten years; or

60 (2) Suspend the person's license, certificate, or permit; or

61 (3) Administer a public or private reprimand; or

62 (4) Deny the person's application for a license; or

63 (5) Permanently withhold issuance of a license or require the
64 person to submit to the care, counseling, or treatment of physicians
65 designated by the board at the expense of the individual to be
66 examined; or

67 (6) Require the person to attend such continuing education
68 courses and pass such examinations as the board may direct.

69 **4. In any order of revocation, the board may provide that the**
70 **person shall not apply for reinstatement of the person's license for a**
71 **period of time ranging from two to seven years following the date of the**
72 **order of revocation. All stay orders shall toll such time period.**

73 **5. Before restoring to good standing a license, certificate, or**
74 **permit issued under this chapter which has been in a revoked,**
75 **suspended, or inactive state for any cause for more than two years, the**
76 **board may require the applicant to attend such continuing education**
77 **courses and pass such examinations as the board may direct.**

536.063. In any contested case:

2 (1) The contested case shall be commenced by the filing of a writing by
3 which the party or agency instituting the proceeding seeks such action as by law
4 can be taken by the agency only after opportunity for hearing, or seeks a hearing
5 for the purpose of obtaining a decision reviewable upon the record of the
6 proceedings and evidence at such hearing, or upon such record and additional
7 evidence, either by a court or by another agency. Answering, intervening and
8 amendatory writings and motions may be filed in any case and shall be filed
9 where required by rule of the agency, except that no answering instrument shall
10 be required unless the notice of institution of the case states such
11 requirement. Entries of appearance shall be permitted[.];

12 (2) Any writing filed whereby affirmative relief is sought shall state what
13 relief is sought or proposed and the reason for granting it, and shall not consist
14 merely of statements or charges phrased in the language of a statute or rule;
15 provided, however, that this subdivision shall not apply when the writing is a
16 notice of appeal as authorized by law[.];

17 (3) Reasonable opportunity shall be given for the preparation and
18 presentation of evidence bearing on any issue raised or decided or relief sought
19 or granted. Where issues are tried without objection or by consent, such issues
20 shall be deemed to have been properly before the agency. Any formality of
21 procedure may be waived by mutual consent[.];

22 (4) Every writing seeking relief or answering any other writing, and any
23 motion shall state the name and address of the attorney, if any, filing it;
24 otherwise the name and address of the party filing it[.];

25 (5) By rule the agency may require any party filing such a writing to
26 furnish, in addition to the original of such writing, the number of copies required
27 for the agency's own use and the number of copies necessary to enable the agency

28 to comply with the provisions of this subdivision hereinafter set forth. The
29 agency shall, without charge therefor, mail one copy of each such writing, as
30 promptly as possible after it is filed, to every party or his **or her** attorney who
31 has filed a writing or who has entered his **or her** appearance in the case, and
32 who has not theretofore been furnished with a copy of such writing and shall have
33 requested copies of the writings; provided that in any case where the parties are
34 so numerous that the requirements of this subdivision would be unduly onerous,
35 the agency may in lieu thereof (a) notify all parties of the fact of the filing of such
36 writing, and (b) permit any party to copy such writing[.];

37 **(6) When a holder of a license, registration, permit, or certificate**
38 **of authority issued by the division of professional registration or a**
39 **board, commission, or committee of the division of professional**
40 **registration against whom an affirmative decision is sought has failed**
41 **to plead or otherwise respond in the contested case and adequate**
42 **notice has been given under section 536.067 upon a properly pled**
43 **writing filed to initiate the contested case under this chapter, a default**
44 **decision shall be entered against the licensee without further**
45 **proceedings. The default decision shall grant such relief as requested**
46 **by the division of professional registration, board, committee,**
47 **commission, or office in the writing initiating the contested case as**
48 **allowed by law.**

536.067. In any contested case:

2 (1) The agency shall promptly mail a notice of institution of the case to
3 all necessary parties, if any, and to all persons designated by the moving party
4 and to any other persons to whom the agency may determine that notice should
5 be given. The agency or its clerk or secretary shall keep a permanent record of
6 the persons to whom such notice was sent and of the addresses to which sent and
7 the time when sent. Where a contested case would affect the rights, privileges
8 or duties of a large number of persons whose interests are sufficiently similar
9 that they may be considered as a class, notice may in a proper case be given to
10 a reasonable number thereof as representatives of such class. In any case where
11 the name or address of any proper or designated party or person is not known to
12 the agency, and where notice by publication is permitted by law, then notice by
13 publication may be given in accordance with any rule or regulation of the agency
14 or if there is no such rule or regulation, then, in a proper case, the agency may
15 by a special order fix the time and manner of such publication[.];

16 (2) The notice of institution of the case to be mailed as provided in this
17 section shall state in substance:

18 (a) The caption and number of the case;

19 (b) That a writing seeking relief has been filed in such case, the date it
20 was filed, and the name of the party filing the same;

21 (c) A brief statement of the matter involved in the case unless a copy of
22 the writing accompanies said notice;

23 (d) Whether an answer to the writing is required, and if so the date when
24 it must be filed;

25 (e) That a copy of the writing may be obtained from the agency, giving the
26 address to which application for such a copy may be made. This may be omitted
27 if the notice is accompanied by a copy of such writing;

28 (f) The location in the Code of State Regulations of any rules of the agency
29 regarding discovery or a statement that the agency shall send a copy of such rules
30 on request;

31 (3) Unless the notice of hearing hereinafter provided for shall have been
32 included in the notice of institution of the case, the agency shall, as promptly as
33 possible after the time and place of hearing have been determined, mail a notice
34 of hearing to the moving party and to all persons and parties to whom a notice
35 of institution of the case was required to be or was mailed, and also to any other
36 persons who may thereafter have become or have been made parties to the
37 proceeding. The notice of hearing shall state:

38 (a) The caption and number of the case;

39 (b) The time and place of hearing;

40 (4) No hearing in a contested case shall be had, except by consent, until
41 a notice of hearing shall have been given substantially as provided in this section,
42 and such notice shall in every case be given a reasonable time before the
43 hearing. Such reasonable time shall be at least ten days except in cases where
44 the public morals, health, safety or interest may make a shorter time reasonable;
45 provided that when a longer time than ten days is prescribed by statute, no time
46 shorter than that so prescribed shall be deemed reasonable;

47 **(5) When a holder of a license, registration, permit, or certificate**
48 **of authority issued by the division of professional registration or a**
49 **board, commission, or committee of the division of professional**
50 **registration against whom an affirmative decision is sought has failed**
51 **to plead or otherwise respond in the contested case and adequate**

52 **notice has been given under this section upon a properly pled writing**
53 **filed to initiate the contested case under this chapter, a default**
54 **decision shall be entered against the holder of a license, registration,**
55 **permit, or certificate of authority without further proceedings. The**
56 **default decision shall grant such relief as requested by the division of**
57 **professional registration, board, committee, commission, or office in the**
58 **writing initiating the contested case as allowed by law.**

536.070. In any contested case:

- 2 (1) Oral evidence shall be taken only on oath or affirmation[.];
- 3 (2) Each party shall have the right to call and examine witnesses, to
4 introduce exhibits, to cross-examine opposing witnesses on any matter relevant
5 to the issues even though that matter was not the subject of the direct
6 examination, to impeach any witness regardless of which party first called him
7 **or her** to testify, and to rebut the evidence against him[.] **or her**;
- 8 (3) A party who does not testify in his **or her** own behalf may be called
9 and examined as if under cross-examination[.];
- 10 (4) Each agency shall cause all proceedings in hearings before it to be
11 suitably recorded and preserved. A copy of the transcript of such a proceeding
12 shall be made available to any interested person upon the payment of a fee which
13 shall in no case exceed the reasonable cost of preparation and supply[.];
- 14 (5) Records and documents of the agency which are to be considered in the
15 case shall be offered in evidence so as to become a part of the record, the same as
16 any other evidence, but the records and documents may be considered as a part
17 of the record by reference thereto when so offered[.];
- 18 (6) Agencies shall take official notice of all matters of which the courts
19 take judicial notice. They may also take official notice of technical or scientific
20 facts, not judicially cognizable, within their competence, if they notify the parties,
21 either during a hearing or in writing before a hearing, or before findings are
22 made after hearing, of the facts of which they propose to take such notice and
23 give the parties reasonable opportunity to contest such facts or otherwise show
24 that it would not be proper for the agency to take such notice of them[.];
- 25 (7) Evidence to which an objection is sustained shall, at the request of the
26 party seeking to introduce the same, or at the instance of the agency,
27 nevertheless be heard and preserved in the record, together with any
28 cross-examination with respect thereto and any rebuttal thereof, unless it is
29 wholly irrelevant, repetitious, privileged, or unduly long[.];

30 (8) Any evidence received without objection which has probative value
31 shall be considered by the agency along with the other evidence in the case. The
32 rules of privilege shall be effective to the same extent that they are now or may
33 hereafter be in civil actions. Irrelevant and unduly repetitious evidence shall be
34 excluded. **Evidence contesting or challenging the basis or merits of a**
35 **guilty finding or a plea of guilty or nolo contendere in a criminal**
36 **prosecution under the laws of any state or the United States or any of**
37 **its territories shall be excluded when evidence establishing the**
38 **existence of such guilty finding or plea of guilty or nolo contendere has**
39 **been admitted in the case;**

40 (9) Copies of writings, documents and records shall be admissible without
41 proof that the originals thereof cannot be produced, if it shall appear by
42 testimony or otherwise that the copy offered is a true copy of the original, but the
43 agency may, nevertheless, if it believes the interests of justice so require, sustain
44 any objection to such evidence which would be sustained were the proffered
45 evidence offered in a civil action in the circuit court, but if it does sustain such
46 an objection, it shall give the party offering such evidence reasonable opportunity
47 and, if necessary, opportunity at a later date, to establish by evidence the facts
48 sought to be proved by the evidence to which such objection is sustained[.];

49 (10) Any writing or record, whether in the form of an entry in a book or
50 otherwise, made as a memorandum or record of an act, transaction, occurrence
51 or event, shall be admissible as evidence of the act, transaction, occurrence or
52 event, if it shall appear that it was made in the regular course of any business,
53 and that it was the regular course of such business to make such memorandum
54 or record at the time of such act, transaction, occurrence, or event or within a
55 reasonable time thereafter. All other circumstances of the making of such writing
56 or record, including lack of personal knowledge by the entrant or maker, may be
57 shown to affect the weight of such evidence, but such showing shall not affect its
58 admissibility. The term "business" shall include business, profession, occupation
59 and calling of every kind[.];

60 (11) The results of statistical examinations or studies, or of audits,
61 compilations of figures, or surveys, involving interviews with many persons, or
62 examination of many records, or of long or complicated accounts, or of a large
63 number of figures, or involving the ascertainment of many related facts, shall be
64 admissible as evidence of such results, if it shall appear that such examination,
65 study, audit, compilation of figures, or survey was made by or under the

66 supervision of a witness, who is present at the hearing, who testifies to the
67 accuracy of such results, and who is subject to cross-examination, and if it shall
68 further appear by evidence adduced that the witness making or under whose
69 supervision such examination, study, audit, compilation of figures, or survey was
70 made was basically qualified to make it. All the circumstances relating to the
71 making of such an examination, study, audit, compilation of figures or survey,
72 including the nature and extent of the qualifications of the maker, may be shown
73 to affect the weight of such evidence but such showing shall not affect its
74 admissibility[.];

75 (12) Any party or the agency desiring to introduce an affidavit in evidence
76 at a hearing in a contested case may serve on all other parties (including, in a
77 proper case, the agency) copies of such affidavit in the manner hereinafter
78 provided, at any time before the hearing, or at such later time as may be
79 stipulated. Not later than seven days after such service, or at such later time as
80 may be stipulated, any other party (or, in a proper case, the agency) may serve
81 on the party or the agency who served such affidavit an objection to the use of the
82 affidavit or some designated portion or portions thereof on the ground that it is
83 in the form of an affidavit; provided, however, that if such affidavit shall have
84 been served less than eight days before the hearing such objection may be served
85 at any time before the hearing or may be made orally at the hearing. If such
86 objection is so served, the affidavit or the part thereof to which objection was
87 made, may not be used except in ways that would have been permissible in the
88 absence of this subdivision; provided, however, that such objection may be waived
89 by the party or the agency making the same. Failure to serve an objection as
90 aforesaid, based on the ground aforesaid, shall constitute a waiver of all
91 objections to the introduction of such affidavit, or of the parts thereof with respect
92 to which no such objection was so served, on the ground that it is in the form of
93 an affidavit, or that it constitutes or contains hearsay evidence, or that it is not,
94 or contains matters which are not, the best evidence, but any and all other
95 objections may be made at the hearing. Nothing herein contained shall prevent
96 the cross-examination of the affiant if he **or she** is present in obedience to a
97 subpoena or otherwise and if he **or she** is present, he **or she** may be called for
98 cross-examination during the case of the party who introduced the affidavit in
99 evidence. If the affidavit is admissible in part only it shall be admitted as to such
100 part, without the necessity of preparing a new affidavit. The manner of service
101 of such affidavit and of such objection shall be by delivering or mailing copies

102 thereof to the attorneys of record of the parties being served, if any, otherwise,
103 to such parties, and service shall be deemed complete upon mailing; provided,
104 however, that when the parties are so numerous as to make service of copies of
105 the affidavit on all of them unduly onerous, the agency may make an order
106 specifying on what parties service of copies of such affidavit shall be made, and
107 in that case a copy of such affidavit shall be filed with the agency and kept
108 available for inspection and copying. Nothing in this subdivision shall prevent
109 any use of affidavits that would be proper in the absence of this subdivision.

621.045. 1. The administrative hearing commission shall conduct
2 hearings and make findings of fact and conclusions of law in those cases when,
3 under the law, a license issued by any of the following agencies may be revoked
4 or suspended or when the licensee may be placed on probation or when an agency
5 refuses to permit an applicant to be examined upon his **or her** qualifications or
6 refuses to issue or renew a license of an applicant who has passed an examination
7 for licensure or who possesses the qualifications for licensure without
8 examination:

9 Missouri State Board of Accountancy

10 Missouri State Board for Architects, Professional Engineers, Professional
11 Land Surveyors and Landscape Architects

12 Board of Barber Examiners

13 Board of Cosmetology

14 Board of Chiropody and Podiatry

15 Board of Chiropractic Examiners

16 Missouri Dental Board

17 Board of Embalmers and Funeral Directors

18 Board of Registration for the Healing Arts

19 Board of Nursing

20 Board of Optometry

21 Board of Pharmacy

22 Missouri Real Estate Commission

23 Missouri Veterinary Medical Board

24 Supervisor of Liquor Control

25 Department of Health and Senior Services

26 Department of Insurance, Financial Institutions and Professional
27 Registration

28 Department of Mental Health

29 Board of Private Investigator Examiners.

30 2. If in the future there are created by law any new or additional
31 administrative agencies which have the power to issue, revoke, suspend, or place
32 on probation any license, then those agencies are under the provisions of this law.

33 3. The administrative hearing commission is authorized to conduct
34 hearings and make findings of fact and conclusions of law in those cases brought
35 by the Missouri state board for architects, professional engineers, professional
36 land surveyors and landscape architects against unlicensed persons under section
37 327.076.

38 4. Notwithstanding any other provision of this section to the contrary,
39 after August 28, 1995, in order to encourage settlement of disputes between any
40 agency described in subsection 1 or 2 of this section and its licensees, any such
41 agency shall:

42 (1) Provide the licensee with a written description of the specific conduct
43 for which discipline is sought and a citation to the law and rules allegedly
44 violated, together with copies of any documents which are the basis thereof and
45 the agency's initial settlement offer, or file a contested case against the licensee;

46 (2) If no contested case has been filed against the licensee, allow the
47 licensee at least sixty days, from the date of mailing, to consider the agency's
48 initial settlement offer and to contact the agency to discuss the terms of such
49 settlement offer;

50 (3) If no contested case has been filed against the licensee, advise the
51 licensee that the licensee may, either at the time the settlement agreement is
52 signed by all parties, or within fifteen days thereafter, submit the agreement to
53 the administrative hearing commission for determination that the facts agreed
54 to by the parties to the settlement constitute grounds for denying or disciplining
55 the license of the licensee; and

56 (4) In any contact under this subsection by the agency or its counsel with
57 a licensee who is not represented by counsel, advise the licensee that the licensee
58 has the right to consult an attorney at the licensee's own expense.

59 5. If the licensee desires review by the administrative hearing commission
60 under subdivision (3) of subsection 4 of this section at any time prior to the
61 settlement becoming final, the licensee may rescind and withdraw from the
62 settlement and any admissions of fact or law in the agreement shall be deemed
63 withdrawn and not admissible for any purposes under the law against the
64 licensee. Any settlement submitted to the administrative hearing commission

65 shall not be effective and final unless and until findings of fact and conclusions
66 of law are entered by the administrative hearing commission that the facts agreed
67 to by the parties to the settlement constitute grounds for denying or disciplining
68 the license of the licensee.

69 **6. When a holder of a license, registration, permit, or certificate**
70 **of authority issued by the division of professional registration or a**
71 **board, commission, or committee of the division of professional**
72 **registration against whom an affirmative decision is sought has failed**
73 **to plead or otherwise respond in the contested case and adequate**
74 **notice has been given under sections 536.067 and 621.100 upon a**
75 **properly pled writing filed to initiate the contested case under this**
76 **chapter or chapter 536, a default decision shall be entered against the**
77 **licensee without further proceedings. The default decision shall grant**
78 **such relief as requested by the division of professional registration,**
79 **board, committee, commission, or office in the writing initiating the**
80 **contested case as allowed by law.**

621.100. 1. Upon receipt of a written complaint from an agency named
2 in section 621.045 in a case relating to a holder of a license granted by such
3 agency, or upon receipt of such complaint from the attorney general, the
4 administrative hearing commission shall cause a copy of said complaint to be
5 served upon such licensee in person, **or by leaving a copy of the complaint**
6 **at the licensee's dwelling house or usual place of abode or last address**
7 **given to the agency by the licensee with some person residing or**
8 **present therein over the age of fifteen**, or by certified mail, together with a
9 notice of the place of and the date upon which the hearing on said complaint will
10 be held. If service cannot be accomplished [in person or by certified mail] **as**
11 **described in this section**, notice by publication as described in subsection 3 of
12 section 506.160 shall be allowed; any commissioner is authorized to act as a court
13 or judge would in that section, and any employee of the commission is authorized
14 to act as a clerk would in that section. In any case initiated upon complaint of
15 the attorney general, the agency which issued the license shall be given notice of
16 such complaint and the date upon which the hearing will be held by delivery of
17 a copy of such complaint and notice to the office of such agency or by certified
18 mail. Such agency may intervene and may retain the services of legal counsel to
19 represent it in such case.

20 **2. When a holder of a license, registration, permit, or certificate**

21 of authority issued by the division of professional registration or a
22 board, commission, or committee of the division of professional
23 registration against whom an affirmative decision is sought has failed
24 to plead or otherwise respond in the contested case and adequate
25 notice has been given under this section and section 536.067 upon a
26 properly pled writing filed to initiate the contested case under this
27 chapter or chapter 536, a default decision shall be entered against the
28 licensee without further proceedings. The default decision shall grant
29 such relief as requested by the division of professional registration,
30 board, committee, commission, or office in the writing initiating the
31 contested case as allowed by law.

32 3. In any case initiated under this section, the custodian of the records of
33 an agency may prepare a sworn affidavit stating truthfully pertinent information
34 regarding the license status of the licensee charged in the complaint, including
35 only: the name of the licensee; his **or her** license number; its designated date of
36 expiration; the date of his **or her** original Missouri licensure; the particular
37 profession, practice or privilege licensed; and the status of his **or her** license as
38 current and active or otherwise. This affidavit shall be received as substantial
39 and competent evidence of the facts stated therein notwithstanding any objection
40 as to the form, manner of presentment or admissibility of this evidence, and shall
41 create a rebuttable presumption of the veracity of the statements therein;
42 provided, however, that the procedures specified in section 536.070 shall apply
43 to the introduction of this affidavit in any case where the status of this license
44 constitutes a material issue of fact in the proof of the cause charged in the
45 complaint.

 621.110. Upon a finding in any cause charged by the complaint for which
2 the license may be suspended or revoked as provided in the statutes and
3 regulations relating to the profession or vocation of the licensee **and within one**
4 **hundred twenty days of the date the case became ready for decision**, the
5 commission shall deliver or transmit by mail to the agency which issued the
6 license the record and a transcript of the proceedings before the commission
7 together with the commission's findings of fact and conclusions of law. The
8 commission may make recommendations as to appropriate disciplinary action but
9 any such recommendations shall not be binding upon the agency. A copy of the
10 findings of fact, conclusions of law and the commission's recommendations, if any,
11 shall be delivered or transmitted by mail to the licensee if the licensee's

12 whereabouts are known, and to any attorney who represented the
13 licensee. Within thirty days after receipt of the record of the proceedings before
14 the commission and the findings of fact, conclusions of law, and recommendations,
15 if any, of the commission, the agency shall set the matter for hearing upon the
16 issue of appropriate disciplinary action and shall notify the licensee of the time
17 and place of the hearing, provided that such hearing may be waived by consent
18 of the agency and licensee where the commission has made recommendations as
19 to appropriate disciplinary action. In case of such waiver by the agency and
20 licensee, the recommendations of the commission shall become the order of the
21 agency. The licensee may appear at said hearing and be represented by
22 counsel. The agency may receive evidence relevant to said issue from the licensee
23 or any other source. After such hearing the agency may order any disciplinary
24 measure it deems appropriate and which is authorized by law. In any case where
25 the commission fails to find any cause charged by the complaint for which the
26 license may be suspended or revoked, the commission shall dismiss the complaint,
27 and so notify all parties.

Bill ✓

Copy